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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re:

Implementation of Sections 12 and 19  
of the Cable Television Consumer  
Protection and Competition Act of  
1992

Development of Competition and  
Diversity in Video Programming  
Distribution and Carriage

MM Docket No.  
92-265

REPLY COMMENTS OF EMI COMMUNICATIONS CORP.

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February 16, 1993

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To the Commission:

REPLY COMMENTS OF EMI COMMUNICATIONS CORP.

EMI Communications Corp. ("EMI"), by its attorneys,  
hereby submits its Reply Comments in response to the  
Commission's proposal to adopt regulations implementing  
Section 19 of the Cable Consumer Protection and Competition  
Act of 1992 (the "Cable Act") concerning program access.<sup>1/</sup>

I. NRTC Seeks the Benefits of Cable Rates  
Without Making the Investment to Provide  
Comparable Value to Satellite Carriers.

In joint comments filed by NRTC and CFA ("NRTC  
Comments"), NRTC continues to make its well-worn complaint  
that its backyard dish ("HSD") packager business pays higher  
rates for superstations than cable operators. EMI notes  
that even as NRTC files as a special pleader for government

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1/ Notice of Proposed Rulemaking, MM Docket No. 92-265,  
FCC 92-543 (adopted December 10, 1992; released December 24,  
1992).

protection, NRTC also boasts of its huge consumer base (NRTC Comments at 2) and, with CFA, boasts of its legislative clout and its role in passage of the Cable Act.<sup>2/</sup> Moreover, NRTC has the resources, through its partnership with Hughes Communications Galaxy, Inc., to launch a powerful DBS service in the very near future.<sup>3/</sup>

By its own admission, NRTC is and will continue to be a significant force in the programming distribution industry. Any price differential in the rates paid by cable operators and NRTC for EMI's superstations results not from unfair treatment or disparities in power, but from the critical differences between cable operators and mere HSD packagers as distributors.

NRTC holds itself out as offering an advanced delivery service, roughly equivalent to that provided by a cable operator. For example, NRTC claims to provide the same administrative, marketing and consumer support for programming distributed via its C-band service as any cable operator.<sup>4/</sup> NRTC conveniently ignores the fact that, unlike cable operators, it plays no role in delivery of EMI's signals to customers. It has not invested in costly plant and equipment, as cable operators have, to make delivery

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2/ NRTC Comments at 8.

3/ Id. at 6-7.

4/ Id. at 3.

possible, to assure high quality service and to package EMI's signals so as to achieve high penetration rates. It does not have an effective anti-piracy program for its industry (which has a notoriously high rate of piracy). In its current role, it is simply a glorified order-taker. NRTC, by investing significantly in the upcoming launch of its new DBS service and by touting in its comments that such service is "equivalent" to cable service,<sup>5/</sup> tacitly admits that its present role is passive and limited. Such a distributor is of more limited value to EMI than a cable operator.<sup>6/</sup>

It is a simple marketplace truth that programmers recognize "value" through pricing. When HSD distributors offer value to a programmer comparable to that provided by an MSO (and at no higher cost, such as copyright costs), they can legitimately demand rates similar to those offered to MSOs. In the meantime, the Commission must recognize the legitimacy of a programming vendor's disparate treatment of differently situated distributors.

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5/ Id. at 7.

6/ In fact, in launching this service NRTC demonstrates that it is fully capable of uplinking superstation signals without the necessity of contracting with satellite carriers. Because satellite carriers like EMI have no proprietary interest in such retransmitted programming, NRTC (or any other party) is free to enter into competition with them.

II. Satellite Programming Vendors Like EMI Are Fully Justified in Differentiating on the Basis of Distributors' Packaging and Penetration Performance.

Without elaboration, National Programming Service ("NPS") urges the Commission to find a number of non-price related practices discriminatory under Section 628. For example, NPS cites as "discriminatory" the practice of requiring a multichannel video programming distributor to offer basic services in a package with other services (or a minimum number of other basic services).<sup>7/</sup>

Cable operators generally offer a large number of basic services to their subscribers on a "bundled" or packaged basis (in fact, contrary to NPS' claims, strong programmers frequently require even large MSOs to place their services on a basic service tier and occasionally require the service to be packaged with some minimum number of other basic services). As the Commission fully understands, packaging a service with other basic services creates a more appealing product for consumers and results in increased penetration levels for a programming service. Programming vendors must be able to recognize the benefits of such packaging, seek it as a goal in contracts and reward cable operators with lower rates than can be offered to, for example, HSD distributors that market services to customers on an a la carte basis.

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<sup>7/</sup> Comments of Consumer Satellite Systems, Inc. d/b/a National Programming Service at 15-16 ("NPS Comments").

III. EMI Does Not Discriminate Between Cable  
Affiliated and Non-Cable Affiliated HSD Back Offices.

While not the direct target of NPS' allegations, EMI feels compelled to address one final claim made by NPS in regard to alleged discrimination by vendors between back offices affiliated with cable operators and those that are not. NPS Comments at 10. EMI cannot comment on the legitimacy of these claims as they relate to other parties. EMI, however, does not discriminate against back offices on the basis of affiliation. It recognizes that similarly-situated back offices deserve comparable rates.

Respectfully submitted,

EMI COMMUNICATIONS CORP.

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February 16, 1993

**CERTIFICATE OF SERVICE**

This will certify that an original and nine copies of the foregoing Reply Comments were delivered by hand this 16th day of February, 1993, to the following:

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

  
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Michael J. Pierce

February 16, 1993